

In re: Samuel D. Griggs et al.  
Application No.: 10/738,547  
Filed: December 17, 2003  
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### **REMARKS**

This Response is submitted in reply to the Office Action mailed February 8, 2005 ("the Action"). Claims 1, 3-20, 22-45 and 47-66 are pending in the application but Claims 3, 5, 7, 8-10, 22, 26-27, 23, 47, 48 and 51-52 are withdrawn from consideration as directed to a non-elected (species) of the invention.

#### **I. Improper Designation of Office Action as "Final" Action**

Applicants acknowledge with appreciation the Examiner's withdrawal of the previous rejections in light of U.S. Patent No. 6,729,102 to Ailey et al. ("Ailey"). As noted previously, Applicants had timely claimed priority to this application, making the pending application a continuation-in-part of Ailey. The Action now renders a new ground of rejection (with newly cited art) that is not necessitated by Applicants' amendment of the claims. As such, Applicants respectfully submit that the instant Action should not be designated as "final" and such characterization of the Action is premature. MPEP 706.07(a). Accordingly, Applicants request reconsideration of the finality of the Action and the withdrawal of this characterization. MPEP 706.07(c) and 706.07(d).

#### **II. The 112, 2d paragraph Rejection**

Claim 62 stands rejected as being indefinite for a claim informality that has been corrected hereinabove. As such, Applicants submit this rejection should be withdrawn.

#### **III. Background of the Invention**

The present invention is directed to netting product chutes that are configured to allow objects to be packaged relatively quickly by moving them through an open chute that holds netting over an exterior segment thereof. As the product exits the chute, it is captured in a closed leading edge portion of the netting and pulls a length of netting with it as it moves downstream, where the trailing edge is closed (typically by an automated and/or manual clipping device). The netting product chutes are used to package solid or semi-solid objects, and is particularly suitable for food items such as ham, turkeys and the like.

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#### IV. The Art Rejections

The Action rejects Claims 1, 4, 6-8, 12, 13, 18 and 60 as being anticipated by U.S. Patent No. 5,884,346 to Hengl ("Hengl"). The Action also rejects Claim 62 as being anticipated by U.S. Patent No. 3,449,259 to Tipper ("Tipper"). The Action rejects the remaining claims as being obvious in light of U.S. Patent No. 4,505,003 to Becker ("Becker"), Hengl or Tipper alone, or in combination with secondary prior art references, such as U.S. Patent No. 3,945,171 to Marietta ("Marietta"). Applicants respectfully disagree.

##### A. Hengl

Hengl proposes a receptacle 9 with a funnel shape and an oval cross section with a horizontal major axis for (human or medical) waste disposal (col. 6, lines 62-66, col. 7, lines 1-5) (emphasis added). Hengl proposes a textile sheath 19 "disposed in accordion fashion around the receptacle 9, and ...invaginated on the interior of the latter through the opening 10" (col. 7, lines 30-35)(emphasis added). Hengl also proposes the use of a second sheath 25 of plastic material to encase the first sheath 19 (col. 7, lines 52-55).

The device proposed by Hengl is directed to an oversized funnel that has an internal textile sheath 19 that supports the waste as it travels to the egress end of the elbow. The Action states that Hengl illustrates a handle and cites elements 2 and 54. However, the alleged chute handle 2, 54 (Figures 1, 8) are disposed on the outside of the housing enclosure and are not on the chute.

The device shown at Figure 1 illustrates an arcuate elbow shaped receptacle 9 that is allegedly removable. The device proposed by Hengl at Figures 7 and 8 keeps the primary portion of the receptacle in place in the enclosure. With respect to this embodiment, Hengl also states that the receptacle can include two pieces; the upper smaller portion 62a (the funnel) is removable and fits within the lower one 62b (col. 9, lines 35-40). In addition, Applicants submit that Hengl also teaches away from a handle placed downstream of the funnel portion on the receptacle, as the downstream portion of the receptacle is fixed inside of the enclosure (Figure 9). Additionally, the internal segment of the receptacle 9 is not readily accessible by a user and it would not seem to be

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useful to put a handle where a user could not readily access it. Also, Hengl places the sheath 19 over the entire exterior (Figure 2) and a handle would seem to interfere with this configuration. As such, Hengl fails to teach or suggest the use of a handle on the receptacle itself and is not an anticipatory reference for the claimed invention.

The secondary references fail to resolve the deficiencies of Hengl.

#### B. Becker

Becker illustrates a cylindrical stuffing horn with a flared entry segment, which connects to an upstream pump and through which fluid material is forced under pressure into a casing. Becker is not directed to netting product chutes. Further, the flared entry segment is a pipe mounting connection to upstream plumbing. One of skill in the art would not have combined features of a horn with that of a netting chute as they operate in very different manners. For example, in operation, the product chute is open to the environment at its ingress (and egress) end to receive the objects for packaging. Marietta and Tipper do illustrate a product chute. However, the chutes of Marietta and Tipper have a discontinuous ceiling for "dropping" in the object in advance of the ram. One of skill in the art would not have modified a horn such as shown by Becker as alleged by the Action with features associated with an open chute as, each operates in a very different manner. Further, neither teaches or suggests the use of a handle.

The Action concedes that the Tipper reference fails to illustrate the use of a handle but states that both Hengl and U.S. Design Patent No. 340,467 to Pollack ("Pollack") teach the use of same. However, Pollack is directed to a two-piece funnel with a long ribbed spout, not a netting product chute as discussed above, Applicants were unable to find where Hengl shows a handle on the receptacle 9.

Regarding Claims 19 and 36, the Action concedes that Becker fails to teach the use of gaps or openings but states it would have been obvious to provide same to Becker to allow cleaning. Applicants disagree. Becker is a horn that must be sealed fluid-tight with upstream plumbing and would not operate properly if there were a space between the flared entry segment and primary body of the chute. One of skill in the art would not have found the recited features obvious in view of the cited references.

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The Action cites secondary references that allegedly describe certain of the features in the dependent claims. For example, the Action cites U.S. Patent No. 4,651,498 to Piereder ("Piereder") as describing the use of a product chute sensor (140) and states that one of skill in the art would have modified the device of Tipper to use the sensor 140. However, the sensor 140 proposed by Piereder is a plate sensor for directing a ram to extrude meat in horn 34 to casing 132. The sensor 140 is clearly not a chute sensor that confirms that the chute is in position before allowing activation of the clipper, etc... Further, like Becker, this reference is directed to a horn, not a netting product chute, and one of skill in the art would not have combined them in the manner noted as each operates very differently.

### C. Tipper

The Action rejects Claim 62 as being obvious over Tipper. However, Tipper fails to teach or suggest, *inter alia*, that the mounting bracket comprises a sensor that cooperates with a component on a mounting frame to inhibit operation when the chute is not in proper operative position.

Regarding Claims 64 and 65 (and 15 and 16), Applicants submit that one of skill in the art would not have found it obvious to use a transversely-extending contoured or recessed mounting bracket in light of Tipper. Tipper fails to teach or suggest such a feature and, absent the teachings of the instant invention, Applicants submit one of skill in the art would not have been motivated to alter the brackets shown by Tipper in a manner that would yield the instant invention. The brackets shown by Tipper provide adequate support and there was no reason to modify them to "provide more support" as alleged by the Action at pp. 6 and 7. Indeed, the brackets proposed by Tipper were used with a longitudinal pusher that would require that the brackets were strong enough to withstand the pressures and forces associated with this feature.

### V. Conclusion

Applicants respectfully note that it is improper to combine elements of separate prior patents when there is no suggestion of such combination. *Panduit Corporation v.*

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*Dennison Manufacturing Co.*, 810 F.2d 1561, 1568 (Fed. Cir. 1987). Further, selective combination of references based only on the suggestions of the instant application is improper. "Hindsight is a tempting but forbidden zone." *Loctite Corp. v. Ultraseal Ltd.*, 228 USPQ 90, 98 (Fed. Cir. 1985). In addition, simplicity alone cannot be determinative of obviousness. *Gentry Gallery, Inc. v. Berkline Corp.*, 45 USPQ2d 1498 (Fed. Cir. 1998).

Applicants respectfully submit that the Action selects discrete features from different prior art documents without considering their overall teaching and selectively combines them to reject the pending claims. Applicants again submit that the Action is using impermissible hindsight rationale to select the different features from the prior art documents without considering the teachings of the documents in whole. The question of patentability does not rest on whether discrete features are found in different prior art documents (or, indeed, on the simplicity of the invention). Rather, it is the claimed combination that is the proper focus of the inquiry.

Applicants submit that the present application is in condition for allowance and the same is earnestly solicited. Should the Examiner have any matters outstanding of resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

Respectfully submitted,

  
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Rosa Lee Brinson